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BOOK REVIEWS.

SIEGFRIED F. HARTMAN, *Editor-in-Charge.*

THE LAW OF REAL PROPERTY. By RALEIGH COLSTON MINOR and JOHN WURTS. St. Paul: WEST PUBLISHING Co. 1910. pp. lix, 959.

PRINCIPLES OF THE AMERICAN LAW OF REAL PROPERTY FOR THE USE OF STUDENTS. By GEORGE W. WARVELLE. Third Edition. Chicago: CALLAGHAN & Co. 1909. pp. liv, 540.

The third edition of Warvelle's well-known handbook of real property law, though announced as a revision of the earlier editions, differs so slightly from its predecessors as to call for little comment. The plan of the work remains unchanged and its text is unaltered, except where, in a few instances, late decisions have called for a restatement of a previous formulation of the law or for the incorporation of a new ruling. But the book may serve a useful purpose by furnishing the reviewer with material for a comparison, with the more elaborate work of Professor Wurts. Both books have this in common that they make no pretense of being complete treatises in the law of real property or profound studies on any part thereof, but present themselves and claim attention modestly as elementary text-books for students. It may be added that each is in its way a competent performance, being clearly written and in the main accurate in its presentation of the law, and that both suffer from the unavoidable defect of works of this highly condensed sort, that, namely, of stating legal conclusions in too general terms and without the limitations and qualifications necessary to make them true.

Is it impertinent to raise the question here whether there is any place for books of this sort in a well-conceived plan of legal education? It will hardly be contended that the most devoted student could acquire anything more than a smattering of the law of real property from such a work. Can it be argued that it is desirable that the student should spend time in gaining such a smattering—however disguised as “general knowledge” or “a bird’s-eye view”—of the subject, when he might be getting to close quarters with it and grappling with its difficulties. The law of real property is a vast and intricate body of principles and rules and no one is fit to enter upon its practice until he has substantially mastered not only the more general principles which underlie it (and which Mr. Warvelle cheerfully declares to be “neither many nor difficult”) but “the specialized rules,” as well, “that have been built upon them.” These general principles must, indeed, be acquired but they form only the background of that specialized and more refined learning which is the working equipment of the lawyer, and it would seem that they can best be acquired as the by-product or insensible deposit of more intensive legal study.

However this may be, for the writer of this review, at least, there is no middle term between a brief historical introduction to the law of real property, such as Digby's, for example, and a fuller and more detailed exposition of the law such as Leake and Gray and Tiffany have furnished for the whole or part of our property law. This is to condemn such excellent handbooks as those of Edwards and Jenks, but the reviewer does not shrink from that conclusion. Whatever

end these may serve, it is not that of professional training. Of course, in a case-law system like ours, the legal mind is developed only through the reading and study of cases and a book of the historical sort can serve only as an introduction to the study of case-law, while a work of the more comprehensive variety finds its chief value in leading the student to the discriminating study of the cases cited.

To return to the books under consideration, it should be said that Professor Wurt's volume, because of its greater fullness and thoroughness, comes much nearer to the class of educational treatises than does the rival work of Warvelle, while its historical learning and consistent exposition of the English common law as the basis of the American law of real property give it additional usefulness as an introduction to the more intimate study of the law. Perhaps the principal defect of the book is its undue reliance upon the work on which it is avowedly based, Professor Minor's *Institutes*, as the sufficient authority for many if not most of the statements of law, which it contains. This is, of course, to "incorporate by reference" much if not all of Minor's treatise in the book before us and to drive the student to the former to find the cases in which the statements of the latter are based. To say that the student need not go to Minor for the cases is not only to place that learned but modest gentleman beside Coke as a legal authority, a position which he would be the first to disclaim, but to deprive the book of all its value as a guide into the echoing workshops where the law of the land is forged.

G. W. K.

THE CONSTITUTIONAL LAW OF THE UNITED STATES. By WESTEL WOODBURY WILLOUGHBY, Ph. D. New York: BAKER, VOORHIS & Co. 1910. Vol. I, pp. lxxxv, 628; Vol. II, pp. xxx, 629-1390.

Books may be written on the constitutional law of the United States for many purposes, for the undergraduate's text-book, the law student's elementary guide, the practitioner's hand-book, for the advanced student whether he be a graduate student of public law or the lawyer seeking fundamental principles, rather than the mere case in point. Judging from his preface and from the contents, it is for the latter class that Professor Willoughby intended to write, and has written. If this be the purpose of the treatise, though not a strikingly great work, it is the best that has appeared in its field.

In making this statement Watson on the Constitution, which came out in June, 1910, is not over-looked. Hare's *American Constitutional Law*, published in 1889, is not entirely supplanted, nor is Pomeroy's briefer work, for, though those treatises have fallen behind the times, the familiarity of their writers with the whole field of law give them a lawyer-like grasp and lawyer-like expression which Willoughby falls short of, though the latter's work is far from that of the mere political scientist, and more than offsets the advantages of Hare and Pomeroy by breadth and modernness of view. Besides it deals with many important topics not touched in those works. Story's and Kent's commentaries have, of course, taken their place as works mainly of historical interest. Cooley on *Constitutional Limitations* is still supreme in its field; for Willoughby devotes relatively little space to its topics. Cooley's smaller work is the student's guide, but is defective in political theory.

Of course, it was expected that Professor Willoughby so far as he touched upon political theory, particularly the theory of sovereignty